UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

AMERON INTERNATIONAL[1]/

Employer

and Case No. 31-RC-7959

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 12, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]/

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[1]/ The name of the Employer appears as corrected at hearing.

[2]/ The parties stipulated that the Employer is a Delaware corporation and that the facility involved herein is located in Etiwanda, California, where the Employer is engaged in the manufacture of concrete and steel pipe. In the last 12 months, a representative period, the Employer has purchased and received goods and materials valued in excess of $50,000 directly from firms located outside the State of California. As such, I find that the Employer satisfies the statutory as well as the Board's discretionary standards for asserting jurisdiction. Siemons Mailing Service, 122 NLRB 81 (1959).

3. The labor organizations involved claim to represent certain employees of the Employer.[3]/

4. Based upon the record herein,[4]/ no question affecting commerce exists concerning the representation of the petitioned-for employees within the meaning of § 9(c)(1) and §§ 2(6) and (7) of the Act.

Petitioner seeks to represent a unit composed of all production and maintenance employees who are performing work within those classifications historically recognized by the Employer at its Etiwanda plant[5]/ as falling within the craft jurisdiction of the Petitioner. The intent of the instant petition is to sever a unit of operating engineers from a larger, long-standing group of employees that has been represented by a council of unions for almost 40 years.

The Employer opened the Arrow facility in the early 1960's when it outgrew one of its other facilities located in Southgate, California. At the time, the Los Angeles Building and Construction Trades Council, acting on behalf of its constituent unions, represented a wall-to wall unit of production and maintenance employees at Southgate.

This method of collective bargaining was carried over to the Arrow plant. When Arrow first started operating, for a brief period, the unions' agent

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[3]/ In addition to the Petitioner three other unions are involved: 1. Southern California District Council of Laborers and its affiliated Local Hod Carriers and Laborers, Local Union No. 783; 2. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, Lodge No. 92, AFL-CIO; and 3. International Brotherhood of Electrical Workers, Local No. 477, AFL-CIO. Herein, the three unions may be referred to collectively as the Intervenor. Also, an individual union may be referred to by its commonly recognized name. For example, Southern California District Council of Laborers and its affiliated Local Hod Carriers and Laborers, Local Union No. 783 may be referred to simply as the "Laborers."

[4]/ I hereby grant Petitioner's unopposed motion for reconsideration to accept its post-hearing brief.

[5]/ The Etiwanda plant is also known as the Arrow plant; these names were used interchangeably in the record.

for collective bargaining was the San Bernardino Building Trades Council. Thereafter (at least since 1966), the constituent unions replaced the San Bernardino Building Trades Council with a self-governing body known as the Council of the Unions ("Council"). Originally, the Council was composed of the Petitioner, International Brotherhood of Teamsters, Local 63,[6]/ International Brotherhood of Electrical Workers, Local 477 and Southern California District Council of Laborers and its affiliate Local 783. In late 1966, Boilermakers, Local 92 joined the Council. Before it joined the group, the Boilermakers were required to enter into a written agreement, with each constituent union and the Employer, in which it agreed that it would never seek to bargain separately.

By letter dated October 26, 2000, the Petitioner informed the Employer of its intent to withdraw from the Council and bargain for a discreet successor agreement as opposed to participating in joint bargaining under the aegis of the Council when the extant agreement expired on January 15, 2001. For purposes of this decision, it is sufficient to state that the Employer ultimately rejected Petitioner's request to bargain separately. Whereupon, Petitioner filed the instant petition.

The issue presented here is whether the petitioned-for unit may be severed from the larger, single collective bargaining unit. However, Petitioner would phrase the issue differently. Relying on Consolidated Papers Inc., 220 NLRB 1281 (1975), Petitioner contends that it has properly withdrawn from the Council and that it has historically represented the petitioned-for unit on a separate basis. Therefore, the Employer is obligated to bargain separately with Petitioner. Alternatively, the Petitioner contends that, even in the absence of

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[6]/ Since the early 1980's, as a result of the Employer's decision to discontinue its in-house trucking department, the Teamsters have not represented any bargaining unit employees. Accordingly, the Teamsters are not involved in this proceeding.

individual bargaining, the facts of this case weigh in favor of severance from the larger unit.

The Employer and the Intervenor completely reject Petitioner's claim that over the years it has maintained a separate identity as a distinct representative of a discreet group of employees--never merging but merely collaborating with the other unions for purposes of collective bargaining. Rather, the Employer and Intervenor's position is that the Council has been and is the recognized representative of a single production and maintenance unit. Thus, the Employer and Intervenor maintain that the Petitioner seeks to carve out a unit of operating engineers from a pre-existing, wall-to-wall, unit. As such, the Employer and Intervenor contend that the outcome of this case is controlled by Mallinckrodt Chemical Works, 162 NLRB 387 (1966) and its progeny, particularly, Firestone Tire & Rubber Co., 223 NLRB 904 (1976). Moreover, the Employer and the Intervenor argue that, when the Mallinckrodt criteria are applied to the facts of the instant case, severance is inappropriate and must be denied.

The Arrow facility is one of five domestic pipe-manufacturing plants operated by the Employer, formerly called American Pipe and Construction Company. Arrow is a 73-acre facility, at which the Employer manufactures gigantic pipe used to transport water to and from aqueducts, dams and reservoirs. At Arrow, the Employer also manufactures pipe used for transmission of sewage.

The Employer employs about 120 workers in 21 different labor grades. There are about 65 laborers, 34 boilermakers, 18 operating engineers and two electricians. Employees of the different trades often work side by side. Moreover, an employee's trade does not necessarily determine his labor grade.

For example, there is a level three operating engineer position and a level thirteen laborer position.

At its facility, the Employer has two principal manufacturing departments: verticast pipe and concrete cylinder or welded steel pipe. The verticast pipe department has about 20 employees. There are four operating engineers in the verticast department, two of whom operate locomotive cranes. The operation of the locomotive cranes is considered skilled work because these cranes pick up enormous pipe; locomotive crane operators are classified at labor grade 19, the highest grade level among the operating engineers at the facility. The two other operating engineers in the verticast department operate the forklift and the batch plant, labor grades 8 and 11 respectively. The rest of the workers in the verticast department are laborers. Moreover, laborers are the leadmen for the entire verticast department. As such, in the verticast department, the operating engineers report to laborers.

Approximately 18 employees work in the concrete cylinder department ("CCP"). The majority of the CCP employees are laborers but the leadmen are boilermakers. There are two other boilermakers in CCP; they are arc welders. There is only one operating engineer in CCP, a forklift operator. Subsumed by the CCP are the coating area, where the pipe is insulated, and the PRD mill where large cylinders are welded and repaired. The coating area is currently staffed solely by laborers and only boilermakers work in the PRD mill.[7]/

Incidental to the manufacture of pipe, the Employer also has a fittings and gunite department, where non-standard pipes and parts are prepared, a transportation department responsible for moving product from

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[7]/ Both the coating department and the PRD mill have vacant forklift operator positions that would be filled by operating engineers.

storage or bringing it to loading areas, a warehouse department responsible for storing parts and materials and, a maintenance department responsible for keeping the plant's equipment operational. Boilermakers and laborers predominate the fittings and gunite department: only one operating engineer, a forklift operator, works in the fittings and gunite department. However, all the current employees in the transportation department are operating engineers. Laborers staff the warehouse. Finally, operating engineers and electricians man the maintenance department.

Here, the record evidence establishes that the Employer's production process is highly integrated. No department functions alone nor is any trade confined to one department. Because of the nature of the work performed at the Arrow plant, operating engineers work side-by-side with all the different trades in almost every department on a daily basis. All of the employees share the facility's locker rooms, restrooms, lunchrooms, and parking area. With the exception of the maintenance department, members of other trades direct the work of operating engineers. Moreover, because of the uniqueness of the Employer's operations, even skilled operating engineers (*e.g.,* locomotive crane and batch plant operators) have received their training on-the-job as opposed to a union apprenticeship.

The employees who Petitioner seeks to represent perform different tasks requiring a variety of skills. For example, as previously mentioned, the more skilled operating engineers operate the locomotive crane and batch plant in the verticast pipe department. Other operating engineers, however, work as mechanics in the maintenance department or as utility men maintaining and repairing the Employer's equipment. If such equipment is large and not capable of being brought to the shop, the mechanic or utility person is required to maintain or repair it in place. This leads to interaction with other trades

and departments. Moreover, about one third of the operating engineers employed by the Employer operate forklifts, moving pipe between the different work areas. The record reflects that these forklift operators may have originally been laborers who advanced through the ranks after receiving on-the-job training.

Throughout the Employer's facility, jobs are customarily filled by inside postings. Pursuant to the terms of successive collective bargaining agreements, the Employer may transfer any employee from one classification to another even if the employee's classification falls under the jurisdiction of another union. After 30-days of work in a classification represented by another union, the employee is required to change his affiliation. The record reveals that if an engineer is absent or there is a marked increase in the production level, laborers may fill-in for engineers by operating forklifts or other heavy equipment. To facilitate this interchange, several laborers have gone through training and are certified forklift operators. Similarly, when the verticast pipe batch plant operator is absent or on vacation, a laborer performs his function. Three other batch plants at the facility are operated exclusively by laborers. Furthermore, at the Employer's neighboring facility, in Fontana, California, there are no operating engineers; instead, laborers and boilermakers operate forklifts and cranes.

The Employer and the Council have had a collective bargaining relationship for almost 40 years. During this period they have entered into successive collective bargaining agreements, the four most recent of which were received into evidence here. Thus, I am able to peruse the contractual nature of the parties' collective bargaining commitment over a 14-year period, from December 1986 through January 2001.

Each of the collective bargaining agreements has substantially the same language in Article I, which is entitled, "Authorization to the Chairman of the Council of the. . . Unions."[8]/ Article I reads:

> THE CHAIRMAN OF THE COUNCIL is hereby designated as the agent of the 'Unions' for the purpose of negotiating and concluding, for and on behalf of the 'Unions,' a collective bargaining agreement with Ameron Arrow Plant covering employees in the production and maintenance department of said 'Company' working at the Arrow Plant, within the classification set forth in Schedule A hereof.
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> The COUNCIL OF UNIONS, through its Chairman, is hereby authorized and empowered to conclude a written agreement incorporating the results of said negotiations.
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> IT IS EXPRESSLY AGREED that the 'Unions' parties hereto authorize and empower the Chairman of the Council to make decisions in determining any question concerning assignment of work covered by the Agreement of which this authorization is a part or the classifications in the unit represented by the 'Unions' respectively parties hereto over any employees of the 'Company' performing any work covered by this Agreement, or any questions concerning which of the four (4) 'Unions' represent employees of the 'Company' working in classifications listed in Schedule A or any other classifications that may be added. Said decisions shall be final and binding upon said 'Unions.'

Thus, historically and continuing through this year, Article I designates one agent, the Council, for purposes of bargaining collectively to agreement with the Employer. Furthermore, the Council alone is authorized to make decisions concerning the work assignments of all employees,

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[8]/ As applicable, the title of Article I reflected the presence of either four or five unions in the Council.

regardless of their trade or union affiliation. Such decisions are final and binding on the individual unions.[9]/

Article IV of the successive collective bargaining agreements, entitled "Union Recognition and Coverage" further demonstrates the intent of the parties to bargain collectively through a single labor representative. It reads in pertinent part:

> A. The 'Company' recognizes the Council of the Five Unions, as the sole and exclusive collective bargaining representative for the following 'Unions': Laborers, Boilermakers, Engineers, Electricians, and Teamsters; for all of its production and maintenance employees in the Arrow Plant whose work is set forth in Schedule A of this Agreement for the purpose of collective bargaining and establishing rates of pay, wages, hours of employment and other conditions of work.
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> B. The Chairman of the Council of the Five Unions, Council, or his representative, is the only authorized person that is the individual agent of the above five (5) 'Unions' that are bound by this Agreement, and he is the only one to be recognized by the parties as being authorized to act for or on behalf of the five (5) 'Unions,' or for any of the employees covered by this Agreement in any manner whatsoever, except as hereinafter modified by the grievance procedure under the terms of this contract.

With regard to the parties' grievance procedure, successive collective bargaining agreements provide for employees and their particular unions, typically through a shop steward, to initiate a grievance. If a grievance is not resolved by Step 2, the contractual grievance procedure requires the involvement of the Council's chair, who alone is empowered to take up the

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[9]/ Article X vests the Council with the authority to decide jurisdictional disputes and questions of work assignment. Such decisions are also final and binding on all the unions.

grievance with the higher managers of the Employer. There was a recent incident where a representative of the Boilermakers neglected to involve the chair at Step 3 and the Employer reminded him that the contract required the chair's participation. The representative acknowledged his mistake on the record. Finally, in the case of arbitration, the chair of the Council or his representative and the Employer's representative select the arbitrator. Here, testimony establishes that intervention by the chair has helped to resolve issues short of arbitration. Thus, based on the parties' successive collective bargaining agreements and anecdotal evidence, it is apparent that with regard to those grievances that are not resolved early on, the chair's role is primary and potentially decisive.

In fact, over the years, there have been very few occasions where arbitration has been invoked. In this regard, the evidence establishes that during the last ten years only two grievances, both of which originated with the Boilermakers, proceeded to arbitration.

Through the years, pursuant to the parties' collective bargaining agreements, the terms and conditions of employment for all production and maintenance employees regardless of their trade or union affiliation have remained uniform. No working conditions are affected or determined by union affiliation or job classification. For example, a single wage schedule covers every unionized worker; wages are determined by the level of skill rather than by trade. Provisions in the successive collective bargaining agreements that cover seniority, union security, transfer, grievance and arbitration, strikes and lockouts, discipline, overtime and other terms and conditions apply to all employees equally without regard to their trades. Employees receive identical benefits, *i.e.*, health insurance, pension, vacation, and holidays. The collective bargaining agreements have provided for short-term transfers from a classifica-

tion that falls under the jurisdiction of one union to a classification that falls under another union's jurisdiction.

A finding of a single bargaining unit is further supported by the parties' historical protocol for bargaining and reaching collective bargaining agreements. In this regard, bargaining for a new agreement follows receipt by the Employer of the Council's letter to reopen. While representatives of all the unions participate in bargaining, the principal spokesperson for them is the Council's chair. Bargaining begins with one set of proposals from the Council. In turn, the Employer's single proposal is made to the Council and all its constituent members. The parties continue to exchange proposals in this fashion through out the bargaining process. If a particular union has an issue with a managerial proposal, this is taken up in a union caucus.

Once the parties reach an agreement, a single ratification vote is conducted among all the unions' members. The ratification vote is usually conducted at the IBEW hall; the Council's chair explains the agreement to everyone present; whereupon, each member casts one secret vote, the ballots are then co-mingled and counted as a single group. A simple majority determines whether the contract is to be accepted or rejected. This occurs without regard to the voter's trade or union affiliation. No separate votes are conducted nor are separate tally sheets compiled at the conclusion of the ratification vote. This uniform process results in a new collective bargaining agreement.

Since the Arrow plant started operating in the early 1960's, there have only been two strikes; the most recent of which occurred in 1995. The 1995 strike lasted one week. It was in response to the Employer's across-the-board proposal to increase employees' health insurance premiums. A single strike vote was taken and all the trades participated in the strike. Afterwards,

having convinced the Employer to retract its proposal, all the trades, as one group, decided to return to work.

As previously stated, the record amply demonstrates that the terms of the parties' successive collective bargaining agreement have been uniformly applied to all production and maintenance employees at the Arrow facility. However, the record also demonstrates that, in recent years, issues concerning levels of compensation, specifically compression and compaction, have arisen. These issues have affected primarily the skilled classifications of employees who are members of the Petitioner, the Boilermakers and the IBEW. The record further reflects that neither the Employer nor the Council has been unmindful of these issues. Thus, during the 1995 negotiations, the parties appear to have discussed the possibility of awarding equity pay for skilled workers in order to prevent wage level compression. Then, during the 1998 negotiations, Petitioner's business agent, David Sharp, was authorized by the Council to meet with the Employer to discuss additional pay for more skilled employees. As a result of these meetings, the Employer agreed to a 6.9 percent equity adjustment for all the skilled classifications over the contract's three-year term, with the boilermakers receiving a little larger adjustment. The general terms of this side agreement were accomplished before contract ratification and were approved by the Council. Pursuant to the Council's approval, the details of the equity adjustments were worked out between the Employer and each affected constituent union after ratification. So too, an arbitral method for resolving any potential disputes over the equity adjustments was formulated.[10]/ Additionally, the 1998 collective bargaining agreement required the parties to form a committee to study the wage compression and compaction issue for the remainder of the contract.

[10]/ The chair was invited to attend all meetings where allocation was discussed.

Petitioner argues that the instant case is identical to Consolidated Papers, Inc., 220 NLRB 1281 (1975), wherein the Board held that notwithstanding a history of joint bargaining, a group of electricians had not merged with the "joint group" nor had the union's separate identity been destroyed. Consequently, in Consolidated Papers, the Board concluded that the employer had violated Section 8(a)(5) by refusing to bargain, upon request, with the IBEW in the sought after unit following the expiration of the effective collective bargaining agreement.[11]/

Here, Petitioner asserts that it preserved its separate group identity through out the years in spite of joint bargaining. In this regard, Petitioner cites the following factors that are discussed in Consolidated Papers: it has maintained separate offices, its has its own stewards who handle operating engineers' grievances,[12]/ each trade has maintained its own seniority list, and the Employer has bargained separately with Petitioner for a tool allowance. Finally, Petitioner contends that, by repeatedly distinguishing among each of the constituent member unions and by requiring each union to execute the successive collective bargaining agreements, the parties have acknowledged the intent of each union to maintain its separate identity.

I find that Petitioner's reliance on Consolidated Papers is misplaced. Parenthetically, Consolidated Papers was not a representation case but an unfair labor practice case. There, the Board refused to take into

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[11]/ In the instant case, the Petitioner filed and withdrew an unfair labor practice charge alleging that the Employer had violated Section 8(a)(5) by refusing to bargain after it requested to bargain apart from the Council.

[12]/ As described above the individual unions are only responsible for Steps 1 and 2 of the grievance procedure.

account unit issues that typically are addressed in craft severance situations. More importantly, the facts of Consolidated Papers are readily distinguishable from the facts presented in the instant case. In Consolidated Papers, the employer-respondent had acquiesced when two other trades had previously withdrawn from joint bargaining; furthermore, in Consolidated Papers, when the electricians withdrew from joint bargaining, none of the other remaining unions objected. The employer-respondent had recognized the union as a separate representative of a separate unit for over 50 years and had bargained with the union separately regarding matters of particular interest to the electricians--not just a tool allowance. Saliently, in Consolidated Papers, there was no evidence that individual bargaining had been predicated upon approval by the "joint group." There, the membership of each union separately ratified the master agreement. Each union handled and paid for its own grievance and arbitration processing from beginning to end. Electricians were subject to immediate supervision by fellow electricians. In sum, in Consolidated Papers, the Board found that the parties had never intended to merge into a single collective bargaining unit.

Here, given the totality of the evidence, including the testimony of record, the language of the successive collective bargaining agreements and the 1966 Boilermaker Memorandum, wherein all the parties affirmed the existence of a single "joint collective bargaining unit" bargaining though a single multi-union bargaining agent, I determine this to be the case. Thus, I conclude that this petition is one for craft severance, subject to analysis under Mallinckrodt Chemical Works, 162 NLRB 387 (1966). Anticipating this conclusion, at hearing and in its brief, the Petitioner alternatively contends that its petition lies under Mallinckrodt.

In Mallinckrodt, the Board annunciated considerations for craft severance including: whether the proposed unit consists of a distinct and homogenous group of skilled workers or a functionally distinct department, working in trades for which a tradition of separate representation exists; whether the existing patterns of bargaining result in stable labor relations and whether that stability will be upset by the end of the existing pattern of representation; the extent to which the petitioned-for unit has maintained a separate identity during its inclusion in the larger single unit and the prior opportunities for separate representation; the degree of integration of the employer's production processes, including the extent to which the continued efficient operation of those processes is dependent upon the performance of the assigned functions of petitioned-for employees; the history and pattern of collective bargaining in the industry involved and; the qualifications of the union seeking to carve out a separate unit.

While the Board has permitted separate representation of production and maintenance employees in the absence of prior collective bargaining history, it has been its established policy to decline to sever an existing production and maintenance unit in the face of a substantial bargaining history on a plant wide or multi-plant basis. Firestone Tire & Rubber Co., 223 NLRB 904, 905 (1976)(citations omitted). Thus, a party seeking severance clearly bears a "heavy burden." Kaiser Foundation Hospitals, 312 NLRB 933, 935 n. 15 (1993). The Board "is reluctant, absent compelling circumstances, to disturb a bargaining unit established by mutual consent where there has been a long history of continuous bargaining, even in cases where the Board would not have found the unit to be appropriate if presented with the issue *ab initio*." Kaiser, *supra* at 936.

Applying the criteria of Mallinckrodt to the facts of the instant case, I find that the employees who Petitioner seeks to carve out perform a wide range of skilled, semi-skilled and unskilled production and maintenance work for the Employer in several departments. Operating engineers fall into six different labor grades, ranging from Grade 3 to Grade 19. They have achieved proficiency through on-the-job training as opposed to formal training or union apprenticeships. Often operators may have started out as laborers. In performing their duties in their particular department and throughout the Arrow plant, the operating engineers regularly interact and work with the other trades. Indeed, they may well receive direction from members of other trades. As such, although operating engineers may perform some duties traditionally associated with their trade, it cannot be said, based on this record and the Employer's operations as a whole, that the petitioned-for unit has maintained a separate identity. As noted by the Employer, the only real thing that the operating engineers' classifications have in common is that they are contractually under Petitioner's jurisdiction.

Inasmuch as the Employer's product and its manufacturing process are rather extraordinary, this record is silent with regard to the history and pattern of collective bargaining in the industry. I note, however, that years ago the Board considered and denied a petition for craft severance at the Employer's Southgate facility. American Pipe and Constr. Co., 169 NLRB 1024 (1968). There, in a substantially similar case, the IBEW unsuccessfully sought severance from a pre-existing single unit represented by a joint representative.

The Employer utilizes a highly integrated process of production to manufacture enormous concrete and steel pipe. All of the trades have an interrelated role in this process. In this regard, operating engineers work in every department and perform different functions throughout the production

process and the physical plant. For instance, the batch plant operator makes the concrete forms and lines the pipe; the locomotive crane operator pours the concrete linings into the verticast pipe; the forklift and crane operators constantly move product as well as supplies around the Employer's plant. So too, mechanics perform maintenance and repair on equipment operators throughout the plant. Accordingly, I find that the efficiency of the Employer's entire system of production depends on the tasks performed by the operating engineers.

The present pattern of representation has resulted in a long and harmonious collective bargaining relationship between the Employer and organized labor. Over the last decade, few grievances have been filed; arbitration was invoked only twice. Moreover, during its 40 years of operation, there have been only two strikes at the Arrow plant.[13]/ As previously stated, in 1995 there was a strike, which was precipitated by an Employer proposal that would have increased the cost of health insurance coverage for all the trades. Together, all the trades voted to reject the contract, and walked off the job. One week later the Employer agreed to maintain the existing rate for medical coverage. Whereupon, all the trades returned to work together. Thus, it is apparent that the on-going method of representation has provided the parties with a stable collective bargaining relationship, the Employer with ordered labor relations and the employees with bargaining strength. Fragmentation of the single unit would, in my opinion, undermine the interests of everyone.

I also note that prior to October 26, 2000, when Petitioner notified the Employer of its desire to represent a unit of operating engineers, the Petitioner had not attempted to secure independent recognition. However,

[13]/ The first of these strikes occurred so long ago that no witness was able to recall its date.

the Petitioner is a labor organization that is fully qualified to represent the petitioned-for unit.

Finally, analysis of the instant record requires discussion of the genuine source of Petitioner's discontent and, hence its reason for seeking to represent a separate unit of operating engineers. Petitioner contends that, by their shear numbers, the Laborers have dominated the Council to the severe economic disadvantage of Petitioner's members and the members of the other constituent unions who work for the Employer. Instead of one union, one vote, the system in place here is one person, one vote. According to the Petitioner, this has resulted in substantial prejudice to the employees in the petitioned-for unit. Moreover, it is the Petitioner's position that the chair of the Council, who has been simultaneously a business representative of the Laborers, has subordinated its interests to the Laborers' interests. Thus, according to the Petitioner, for all intents and purposes its members are being marginally represented by the Laborers Union.

In the context of a petition for craft severance, the Board recently examined the issue of purported prejudice or neglect experienced by a smaller employee group as a result of its inclusion in a larger unit. Metropolitan Opera Assn., Inc., 327 NLRB 740, 752, 754,756 (1999). There, a group of choristers petitioned for severance from a historical unit of other onstage performers, stage managers, directors and choreographers. A witness for the choristers testified that for many years the joint representative had acted almost like an adversary; indeed, according to him, not only did the choristers need to challenge the Met, they also needed to confront their own union. The Board affirmed the Director's refusal to find that the choristers' interests had been so neglected as to warrant their severance from the over-all unit.

So too, having considered all of the circumstances, I find that Petitioner's claim of prejudice and neglect does not justify establishment of a separate unit. First, I reject Petitioner's contention that the Council has failed to adequately represent employees in the petitioned-for unit. See, Zia Co., 174 NLRB 972, 974 (1969). Petitioner's complaints are limited in large part to issues of wages, specifically the compression and compaction experienced by tenured, skilled employees relative to newer, less skilled workers. The record reflects that the Council and the Employer have responded to Petitioner's concern. In 1998, the parties agreed to sidebar negotiations between the Employer and Petitioner for equity adjustments above the contractual wage scale. Second, I not persuaded by the Petitioner's argument that wage disparities between employees in the petitioned-for unit and operating engineers who work under Petitioner's master labor agreement with construction industry employers establishes prejudice or neglect. Instead, I find, in agreement with the Intervenor, that effective collective bargaining often requires the subordination, to some degree, of certain interests to promote the well being of the entire unit.

In light of the foregoing and the entire record presented here, I find overall that the existing pattern of representation has produced a long, stable, and decent collective bargaining relationship. Therefore, I conclude that the unit sought by Petitioner is not appropriate and, accordingly severance is denied and the petition is dismissed.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 15, 2001.

DATED: August 1, 2001

/s/ James J. McDermott
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